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Continuing our tradition of keeping people updated on legislative changes, we offer you a short review of some of the most important recent amendments and additions to Kazakhstan legislation.

LEGISLATION

→ *Amendments to Labor Legislation*

On December 23, 2004, amendments and changes to the labor law of the Republic of Kazakhstan were introduced, aiming to improve labor relationships between employers and employees with the purpose of reinforcing labor guarantees to employee and employers' responsibilities.

The basic principles of the regulation of labor relationships did not change. However, the rules regulating the following issues changed:

- employer responsibilities,
- conclusion and termination of employment contracts and collective bargaining agreements,
- employment of expectant mothers and women with infants,
- labor remuneration.

Employment contracts concluded before the changes were made remain valid. However, they must comply with the provisions of the new amendments to labor law regarding the continuation and termination of employment contracts.

→ *Employer Rights and Duties*

Employers should issue internal acts only within their authorities. If these acts change employees' labor conditions, such acts should be issued only with the approval of employee representatives.

Labor conditions include:

- remuneration, protection and regulation of employees;
- work hours;
- the combination of duties and the fulfillment of duties of temporarily absent workers;
- technical, sanitation and production conditions.

The amendments also establish some new duties for employers. In particular, employers must take measures to reduce risks at employee workplaces and in industrial and technological processes.

Furthermore, employers must keep precise records of each employee's work hours and overtime hours. An employer may suspend an employee from work if the employee commits actions that could result in violation of work safety rules and lead to emergency situations.

→ *Employment Contract*

The minimum contract period is now one year. An employment contract may be concluded for a period of less than one year only in connection with a short-term type of work or a substitution for a temporarily absent employee.

If an employment contract is concluded with an employee for a second time, that employment contract is considered to be for an indefinite period. An employer has no right to dismiss an employee due to contract expiration in the case of employment for an indefinite period.

When an employee and an employer do not terminate an employment relationship upon expiration of an employment contract and the employee

continues working, the contract period is regarded as prolonged for an indefinite period of time.

Previously, an employer had the right to conclude an employment contract with an employee for a definite or indefinite period of time at its own discretion. According to the new amendments, an employer has no right to conclude employment contracts for a specific period of time simply to avoid the provision of certain guarantees and compensations to employees. An employer using limited contract periods to avoid providing certain benefits may be held liable in accordance with the laws of the Republic of Kazakhstan, including administrative penalties.

Previously, an employee had the right to terminate any employment contract simply by giving his or her employer one month of advance notice and faced no liabilities for early termination of a contract. According to the new amendments, an employment contract may contain mutual obligations with regard to early termination of a contract concluded for a certain period of time. However, the minimum advance notification period remains one month.

The list of documents that can be used to confirm employment is expanded and does not include only the labor log and employment contract, but also the following documents:

- excerpts from hiring and dismissal orders
- records of previous work experience (certified information about an employees' labor activity)

An employer cannot obligate an employee to perform work that is not stipulated in the employee's employment contract, unless stipulated by legislation.

Employers have the right to temporarily transfer an employee to carry out other duties in connection with production needs or temporary substitution for an absent employee.

In the case of idle time, an employer has the right to transfer an employee to a different job without his consent for a period of up to one month. Compensation for this period of time should be no less than two-thirds of the monthly salary that the employee earned in his or her previous work.

In the case of a company's reorganization or change of ownership, employment relations and conditions are not suspended as a result of the change.

Termination of Employment Contract

An employment contract can be terminated at the employee's initiative if the employee informs the employer in writing one month before termination of the employment contract. After this period, the employee has the right to stop working. On the employee's last working day, the employer should give to the employee his or her labor log and other employment documents, and pay all legally required payments and compensation.

An employer is not required to inform an employee in advance about termination of the employee's employment at the employer's initiative for just cause (repeated non-fulfillment or violation of labor duties or a one-time gross violation of labor duties as specified by the labor legislation of the Republic of Kazakhstan) or in the case of reinstatement by court decision of an employee previously working in that position or denial of access to state secrets necessary for the terminated employee's work.

The basis for an employer's termination of an employment contract at the employer's initiative did not change significantly. However, now an employment contract may be terminated if an employee is denied access to state secrets.

Restrictions on Termination of Employment Contract

The amendments prevent an employer's termination of an employment contract during an employee's annual vacation or sick leave.

→ *Collective Agreement*

According to the new amendments, a party that receives a proposal from another party to start negotiations on a collective bargaining agreement is obliged to consider it and to enter into negotiations within 10 days. Hence, if an employer receives notification from employee representatives, negotiations will commence and a collective agreement will eventually be concluded.

Parties to negotiations on collective bargaining agreements have certain guarantees. In particular, they may be released from their work duties for the period of negotiations with guaranteed payment of their average monthly salary for the period of negotiations. Also, the period of such negotiations is included in the determination of their seniority and entitlement to certain benefits.

Employees who are not members of a trade union have the right to authorize a trade union or trade union representatives to represent their interests before their employer. According to the new amendments, employees' interests can also be represented by other individuals who are not trade union members.

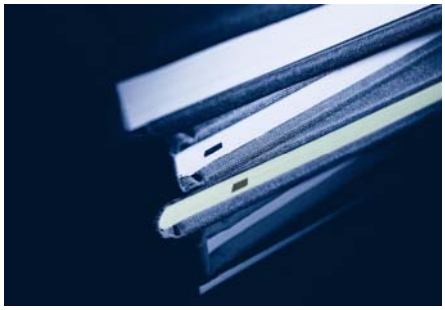
An employer should submit a signed collective bargaining agreement to the regional state labor body within a month following the date of signing of the agreement.

→ *Other Provisions of Collective Agreement*

Overtime Work

The maximum amount of overtime work allowed by law remains unchanged and should not exceed 2 hours per day (one hour in cases of heavy physical work or work in harmful or dangerous conditions). However, the new amendments establish an overall maximum amount of four hours of overtime per week. Overtime at heavy physical work or work in harmful or dangerous conditions should not exceed two hours per week.

Vacation



Additional paid vacation should be provided to employees engaged in heavy physical work or work in harmful or dangerous work conditions. The amount of additional paid vacation should be stipulated by the Ministry of Labor. Employees cannot be recalled to work in interruption of this additional vacation.

The law no longer states that vacation for the first year of employment is granted only upon conclusion of the first year of work. Accordingly, vacation must be granted to an employee independent of the length time he or she has worked for the employer.

The law does not prevent an employer from offering employees cash compensation in lieu of vacation leave. However, the law does not permit an employer to deprive an employee of vacation for two consecutive years. Thus, if

an employee received cash compensation in one particular year, he cannot receive cash in lieu of vacation leave in the immediately succeeding year and must take vacation leave.

Idle Time

Payment for idle time resulting from the employer's actions should be at least 50 percent of the employee's average monthly salary over the prior 12 months.

Labor of Expectant Mothers and Women with Infants

New amendments to the labor low stipulate the following additional guarantees for expectant mothers and women with infants:

- expectant mothers may be engaged in night time work only with their written consent;
- expectant mothers cannot work overtime. Invalids and women who have children of preschool age (or invalid child under 16) can work overtime with their written consent;
- in addition to rest breaks and lunch breaks, feeding breaks of not less than 30 minutes should be given to women who have children under the age of under 1.5 years. These breaks should be given after each three hours of work;
- feeding breaks of not less than one hour should be given to women with two or more children under the age of 1.5 years. Breaks for feeding children should be treated as work time;
- Additional unpaid maternity leave must be offered to mothers until their child reaches the age of three years. Mothers can take additional maternity leave anytime before the infant is 3 years old;
- Employers cannot terminate employment contracts with expectant mothers or women with infants (with the exception of cases of liquidation of the employer, refusal of the employee to transfer to another job within the organization, reinstatement by court decision of an employee previously working in that position, or termination of an employment contract for just cause.

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